



3679/1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventor: Alain BROCHEZ

Attorney No.: BROC3001/JEK/JJC

Application No.: 09/806,304

Customer No.: 23364

Filed: March 29, 2001

Confirmation No: 6723

Examiner: Ernesto Garcia

Art Unit: 3679

For: Corner Joint And Method For Making The Same

**ELECTION AND TRAVERSE OF
ELECTION REQUIREMENT OF MARCH 22, 2005**

MAIL STOP NON-FEE AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTRODUCTORY COMMENTS

This reply is in response to the Office Action dated March 22, 2005. A Petition to extend the period to reply by two months is filed concurrently herewith.

ELECTION

The applicant hereby elects the species of Figures 1-7 for prosecution on the merits. The claims readable on the species of Figures 1-7 are claims 33, 34, 36, 39, 50, 53-57 and 59-65.

Only pending claim 49 is directed to the species of Figures 8-11 since it recites the insert parts 5 and 6 that are hinge mounted to one another. It will be noted that the pending claims do not specifically recite the conical drive-in pens of Figures 8-11.

Applicant hereby reserves all rights to the non-elected subject matter.

TRAVERSAL

This election requirement of the pending claims is traversed on the basis that this election requirement is improper since (1) examination of all of the pending claims places no burden on the current examiner because the pending claims each recite subject matter which was either allowed or was considered as being allowable by the previous examiner (MPEP 803), and (2) that the current examiner has not given full faith and credit to the examination of the pending claims by the previous examiner (MPEP 704.01).

The applicant submits that all of the pending claims, as clearly indicated in the last amendment filed on January 27, 2005, each recite subject matter that was previously considered as being allowed or allowable in the Office action (4th Office action) dated October 27, 2004.

Already, the applicant has received four substantive Office actions in the pending application. These actions include the following: 1st Office action mailed on July 31, 2002, 2nd Office action mailed on May 23, 2003, 3rd Office action mailed on March 23, 2004 (final action), and 4th Office action mailed on October 27, 2004. In response to each Office action, the applicant relied on the examination results of the previous examiner and progressed the examination of the pending application. In the 4th Office action, applicant placed rejected claims in the pending application in a manner that included subject matter deemed allowable by the previous examiner.

In the 4th Office action, the previous examiner identified the following claims as being allowable:

claims 36, 39, 53, 54 and 55 were allowed;

claims 49, 50 and 59 recite allowable subject matter and would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims;

claims 56 and 57 would be allowable if rewritten to overcome rejections under 35 U.S.C. 112, second paragraph; and

claim 33 would be allowable if rewritten to overcome a rejection under 35 U.S.C. 112, second paragraph, and to include the limitations of its base claim and intervening claims.

As can be seen from the following claim concordance chart, and in view of the amendment of claim 56 to overcome the rejection under 35 U.S.C. 112, second paragraph, the claims were placed in condition for allowance according to the acknowledgment by the previous examiner in the 4th Office action.

<u>Pending Claim</u>	<u>Status</u>	<u>Amendment</u>
29	Canceled	
30	Canceled	
31	Canceled	
32	Canceled	
33	Amended	Subject matter of claims 31, 32
34	Amended	Made dependent from claim 33
35	Canceled	
36	Unchanged	
37	Canceled	
38	Canceled	

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<u>Pending Claim</u>	<u>Status</u>	<u>Amendment</u>
39	Unchanged	
40	Canceled	
41	Canceled	
42	Canceled	
43	Canceled	
44	Canceled	
45	Canceled	
46	Canceled	
47	Canceled	
48	Canceled	
49	Amended	Subject matter of claim 29
50	Unchanged	
51	Canceled	
52	Canceled	
53	Unchanged	
54	Unchanged	
55	Unchanged	
56	Amended	Subject matter described on page 11, first full paragraph of substitute specification
57	Unchanged	
58	Canceled	
59	Amended	Subject matter of claim 31
60	New	Includes subject matter of claim 30 and depends from claim 36

<u>Pending Claim</u>	<u>Status</u>	<u>Amendment</u>
61	New	Includes subject matter of claim 35 and depends from claim 36
62	New	Includes subject matter of claim 45 and depends from claim 56
63	New	Includes subject matter of claim 46 and depends from claim 56
64	New	Includes subject matter of claim 47 and depends from claim 56
65	New	Includes subject matter of claim 48 and depends from claim 56

In light of the election requirement, it appears that this election requirement was made irrespective of applicant's amendment of the claims in reply to the 4th Office action because it is merely directed to species in the drawings. In effect, the election requirement conveys that the current examiner is taking an entirely new approach to the pending application or is attempting to reorient the point of view of the previous examiner. Of course these apparent actions run contrary to Office policy, as spelled out in MPEP 704.01, wherein it plainly indicates that a new examiner should give full faith and credit to the search and action of the previous examiner unless there is clear error in the previous action or knowledge of other prior art.

The current examiner has not indicated any clear error in the previous action, or knowledge of any additional prior art. Because the current examiner is now requiring an election of species, one can only assume that the examiner is reorienting the point of view of the previous examiner, and starting anew. The previous examiner did not see it fit to require an election of species, and a selection of claims for examination. This is clearly evidenced by the four Office actions, and nearly three years of prosecuting this application.

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As previously discussed, the election requirement is based on an election of species. Even if the election requirement were modified to a restriction of different inventions of the pending application, the applicant submits that the pending claims relate to the same inventive group. Despite the additional subject matter of claim 56 in the amendment in response to the 4th Office action, this subject matter does not cause claim 56 to depart from the inventive group of the other claims. Instead, it merely makes claim 56 more definite so as to comply with 35 U.S.C. 112, second paragraph.


Once again, the subject matter of the pending claims has already been exhaustively searched, and there is therefore no undue burden to the current examiner since the each of the pending claims recites subject matter already indicated as being allowable by the previous examiner. In accordance with Office policy, the current examiner should give full faith and credit to the previous examiner's examination of the pending application.

Because of these observations, the applicant respectfully requests removal of the election requirement of the pending claims. Moreover, allowance of the pending claims is courteously requested in view of the applicant's amendment of the claims in reply to the 4th Office action.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicant's Attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

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Date: June 6, 2005

Respectfully submitted,

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